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Attorneys for Plaintiff and Creditor  
Louis S. Del Carlo

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

In re:

GREGORY A. DEL CARLO and TRACY  
L. DEL CARLO,  
  
Debtors.

CASE NO. 16-52268-MEH

CHAPTER 13

FRANK DEL CARLO and LOUIS DEL  
CARLO,

Plaintiffs,

vs.

GREGORY A. DEL CARLO and TRACY  
L. DEL CARLO,  
  
Defendants.

ADVERSARY NO. 16-05084

**MOTION TO WITHDRAW AS COUNSEL  
FOR PLAINTIFF AND CREDITOR LOUIS  
DEL CARLO**

Date: June 5, 2017

Time: 11:00 a.m.

Courtroom: 3020

Judge: Hon. M. Elaine Hammond

COMES NOW Pipal Spurzem & Liem LLP ("PS&L") who moves this court for an order authorizing its withdrawal and relieving it as counsel for Plaintiff and Creditor Louis Del Carlo (aka Louis S. Del Carlo) pursuant to Civil Local Rule 11-5 and Federal Rules of Civil Procedure Rule 17(a)(3) as follows:

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**I. INTRODUCTION**

PS&L seeks an order authorizing its withdrawal and relieving it as counsel for Plaintiff and Creditor Louis Del Carlo on the grounds that Louis Del Carlo passed away on March 20, 2017 and PS&L has not reached agreement with Louis Del Carlo's successor-in-interest for the continued representation of Louis Del Carlo's estate.

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**II. STATEMENT OF FACTS**

PS&L is currently representing Louis Del Carlo in the above-referenced Chapter 13 bankruptcy case by virtue of having filed a Proof of Claim on his behalf (POC#13-1). PS&L is also currently representing Louis Del Carlo in the above-referenced Adversary Case No. 16-05084.

On March 20, 2017, Louis Del Carlo passed away. He is survived by his spouse, Rita Del Carlo. Following Mr. Del Carlo's passing, the undersigned attorney had a number of telephone conversations with Rita Del Carlo regarding the status of the pending bankruptcy matters, future court dates and procedures, the need for her to substitute into this matter as the executor or representative of her husband's estate or as the successor trustee of his trust, and the status of Louis Del Carlo's unpaid bill with PS&L. The undersigned attorney and Rita Del Carlo were, and are, unable to reach an agreement concerning the continued representation by PS&L of Louis Del Carlo's estate. Rita Del Carlo indicated in conversation that she would investigate retaining another attorney to represent her husband's estate, but as of the date of this motion the undersigned attorney does not believe she has done so.

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**III. DISCUSSION**

Civil Local Rule 11-5 provides in relevant part that counsel may not withdraw from an action until relieved by order of the court. This rule is made applicable to this matter by Bankruptcy Local Rule 1001-2.

Federal Rules of Civil Procedure Rule 17(a)(1) provides that an action must be prosecuted in the name of the real party in interest, who may be an executor or administrator of an estate, or a trustee of a trust. Federal Rules of Civil Procedure Rule 17(a)(3) provides that the court must allow a

1 reasonable time for the real party in interest to be substituted into an action before dismissing the  
2 action for failure to prosecute in the name of a real party in interest.

3 In light of the background facts described above, and particularly in light of the lack of an  
4 agreement for the representation by PS&L of Louis Del Carlo's estate, PS&L has no choice but to  
5 withdraw from this matter. PS&L will serve Rita Del Carlo with this motion by mail, and requests  
6 that the court give Ms. Del Carlo a reasonable amount of time to retain an attorney and to substitute  
7 into this matter as the real party in interest.

#### 8 IV. CONCLUSION

9 WHEREFORE, PS&L moves this court for an order authorizing its withdrawal and relieving it  
10 as counsel for Plaintiff and Creditor Louis Del Carlo (aka Louis S. Del Carlo).  
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12 Dated: 5-1-17

PIPAL SPURZEM & LIEM LLP

14 By: Peter R. Spurzem  
15 PETER R. SPURZEM  
16 Attorneys for Plaintiff  
Louis Del Carlo

#### 18 DECLARATION OF PETER R. SPURZEM

19 I, Peter R. Spurzem, declare:

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21 1. I am an attorney at law duly admitted to practice before all the courts of the State of  
22 California and the attorney of record for Plaintiff Louis Del Carlo in the above-described action.

23 2. Louis Del Carlo passed away on March 20, 2017. He is survived by his spouse, Rita  
24 Del Carlo. I am informed and believe that Rita Del Carlo is the executor or representative of her  
25 husband's estate and/or the successor trustee of his trust.


26 3. Following Mr. Del Carlo's passing, I had a number of telephone conversations with  
27 Rita Del Carlo regarding the status of the pending bankruptcy matters, future court dates and  
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1 procedures, the need for her to substitute into this matter as the executor or representative of her  
2 husband's estate or as the successor trustee of his trust, and the status of Louis Del Carlo's unpaid bill  
3 with PS&L. Ms. Del Carlo and I were, and are, unable to reach an agreement concerning the  
4 continued representation by PS&L of Louis Del Carlo's estate.

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6 4. Rita Del Carlo indicated in conversation with me that she would investigate retaining  
7 another attorney to represent her husband's estate, but as of the date of this motion I do not believe  
8 she has done so.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct.

11 Dated: 5-1-17

  
Peter R. Spurzem

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am employed in the County of San Benito. I am over the age of 18 years and not a party to the within entitled action. My business address is 350 Fifth Street, Hollister, CA 95023.

On May 1, 2017, I served the within **MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF AND CREDITOR LOUIS DEL CARLO** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Hollister, California, to all parties entitled to receive regularly mailed notices, addressed as follows:

Rita Del Carlo  
173 Mitchell Road  
Hollister, CA 95023

All other parties entitled to receive notice via ECF will receive such notice upon the electronic filing of the above-named documents.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on May 1, 2017 at Hollister, California.

  
Eunice Saldivar